Supreme Court, U.S.
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No. 92-905

In The

Supreme Court of the United States

October Term, 1992

MAYFLOWER INTERNATIONAL COMPANY dba HONSEW, INC., a Hawaii Corporation; TSUNG HAI LIN aka THEODORE T.H. LIN and MAY KWONG,

Petitioners,

vs.

PAUAHI ASSOCIATES, a Hawaii General Partnership,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Hawaii

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Is it a violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States of America for a state, in balancing the respective property rights of landlords and tenants, to require a tenant who is not paying rents to deposit any disputed rents into a court administered rent trust fund in order to remain in possession of landlord's property pending a determination of the rights and obligations of the parties, where the tenant cannot show to the court's satisfaction that tenant has already paid the rents or is otherwise allowed to withhold or deduct rents pursuant to a written agreement that the rents could be withheld or deducted as provided in Hawaii Revised Statutes Section 666-21?

IDENTIFICATION OF PARTIES

The parties to the proceedings held below in the courts of the State of Hawaii consisted of the following:

1. PAUAHI ASSOCIATES, a Hawaii General Partnership (hereinafter "Respondent");

2. MAYFLOWER INTERNATIONAL COMPANY, dba Honsew, Inc., a Hawaii General Partnership (hereinafter "MAYFLOWER");

3. HONSEW, INC., a Hawaii corporation (hereinafter "HONSEW");

4. TSUNG HAI LIN, aka Theodore T. H. Lin (hereinafter "LIN"); and

5. MAY KWONG (hereinafter "KWONG").

MAYFLOWER, LIN, KWONG and HONSEW (hereinafter collectively referred to as "Petitioners") were the Defendants-Appellants in the case before the Hawaii Supreme Court.

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DECISIONS BELOW

The Memorandum Opinion of the Supreme Court of the State of Hawaii, dated August 26, 1992, was reprinted in the Petition as Appendix ("App.") "2". On November 24, 1992, the Hawaii Supreme Court entered its Order allowing costs pursuant to Respondent's Verified Bill of Costs. (Respondent's Appendix "1") However, as of the filing of the Petition on November 24, 1992, final judgment had not yet been entered by the Hawaii Supreme Court. Final judgment was entered on December 11, 1992. (Respondent's Appendix "2")

COUNTER-STATEMENT OF JURISDICTION

MAYFLOWER INTERNATIONAL COMPANY, dba Honsew, Inc., a Hawaii General Partnership ("MAYFLOWER"), TSUNG HAI LIN, aka Theodore T. H. Lin ("LIN") and MAY KWONG's ("KWONG") lack the requisite standing to bring this appeal. An entry of default was entered against MAYFLOWER and KWONG, which default has not been set aside or appealed. Transcript of July 9, 1990, page 3, lines 4-12; Transcript of July 30, 1990, page 44, lines 20-25 to page 45, lines 1-18. (Respondent's Appendices "3" and "4") All claims against LIN and KWONG, Guarantors under the Lease, have been bifurcated from the present action, and were to be transferred to the Circuit Court of the First Circuit for jury trial at Petitioners' and HONSEW's request. Transcript of July 30, 1990, page 43, lines 8-25 to page 44, lines 1-18. (Respondent's Appendix "4") As a Guarantor of the Lease, LIN has no right to possession of the subject premises.

COUNTER-STATEMENT OF THE CASE

Hawaii Revised Statutes Section 666-21, known as the Hawaii Rent Trust Fund Statute, seeks to balance the property interest of the landlord, which is just as deserving, with the property interests of the tenant. The statute implicitly recognizes that a tenant who is unable to pay rents as they become due is very likely to be uninterested in a speedy resolution of the court proceedings that could terminate its use of the property. The requirement of payment of rents as they become due into a court administered rent trust fund provides partial security to the landlord while the tenant remains in possession of the landlord's property and protects the monies of the tenant at the same time. The Rent Trust Fund Statute makes deposits to the rent trust fund a precondition to continued possession by a tenant who is not paying rent, but the rent trust fund deposits are not a precondition to a trial on the merits. The statute entitles the tenant to a hearing prior to the issuance of an order, to show that the rents have already been paid or to show the existence of a written agreement allowing it to withhold or deduct payments of rent.

The statute merely requires the tenant to deposit into the court administered rent trust fund the amounts that the court finds would have been due and owing according to the terms of the lease. The District Courts of the State of Hawaii are courts of record and also have jurisdiction to adjudicate the entire dispute unless one of the parties requests that the claims for damages and offsets be transferred to the Circuit Court of the State of Hawaii for a jury trial.

Without the Rent Trust Fund Statute, upon mere allegations of offsets to rents due under a lease, a tenant could remain in possession of the landlord's property for a substantial period of time without paying rents even though the lease agreement prohibited such offsets. The landlord could be deprived of its property for a substantial period of time with little hope of ever recovering the back rents from a financially troubled tenant. The Hawaii State Legislature obviously recognized this unfairness and injustice in establishing the Rent Trust Fund Statute. Prior to establishment of the rent trust fund provision in Hawaii, disputes regarding non-payment of rent resulted in lengthy eviction proceedings after which the landlord would be unable to recover the rents which had accrued while the tenant was in possession.

In the case at bar, Petitioners in asserting that they were damaged by moving into an "uncompleted space" have failed to apprise this Court of the explicit terms of Section III, paragraph F of the Lease dated May 26, 1989, by and between Pauahi Associates, as Landlord, and Mayflower International Co., dba Honsew, Inc., as Tenant, which states that:

> If Landlord shall be unable to give possession of the demised premises on the date of the commencement of the term hereof by reason of the fact that the premises are located in a building being constructed and which has not been sufficiently completed to make the premises ready for occupancy or by the reason of the fact that a certificate of occupancy has not been procured, the *Landlord shall not be subject to any liability for the failure to give possession on said date.* (emphasis added)

In signing their Lease for the Maunakea Marketplace, Petitioners were fully aware that the marketplace was still under construction. They had agreed in their Lease that Respondent would not be liable for failure to deliver possession on time due to the uncertainties in the completion of construction, yet Petitioners assert that they could withhold rental payments because of this lack of completion. Furthermore, Petitioners were only "forced" to move into the "uncompleted premises" because their prior landlord had threatened to evict them. Although Respondent accommodated Petitioners' early move into the incomplete marketplace in November of 1989 and allowed them to begin their business operations, the obligation to pay rents did not begin until February of 1990 when Petitioners' improvements and the marketplace were substantially completed. Respondent also paid a leasehold improvement allowance of $120,000.00 for Petitioners' leasehold improvements.

Petitioners almost immediately defaulted in the payment of rents and began to claim numerous alleged offsets as grounds for nonpayment. After receiving notice by certified mail of their default and of Respondent's intent to pursue a summary possession action to evict Petitioners for nonpayment of rents, Petitioners sued Respondent in the First Circuit Court of the State of Hawaii for damages to offset their rental obligations. Respondent subsequently filed its summary possession action in the District Court of the State of Hawaii as required under Hawaii law.

It was Petitioners who utilized numerous dilatory tactics to avoid adjudication of the summary possession proceeding in the hope that they would be able to secure

the funds to pay the delinquent rents. Among other things, Petitioners filed a Motion to Dismiss Complaint or to Transfer Action to First Circuit Court, or to Stay All Proceedings pending a determination in the Circuit Court action.

After the first hearing on the Motion for Establishment of a Rent Trust Fund in July 1990, Petitioners moved for an order to file an interlocutory appeal and received a two-week stay on the establishment of a rent trust fund to allow them to file the appeal. Following the court's subsequent determination that the order was not appealable, Petitioners demanded a full evidentiary hearing to determine the amounts due pursuant to the terms of the Lease. An evidentiary hearing was held on August 2 and 29, 1990 to determine the amount of rents to be deposited into the court administered rent trust fund. After the hearing, Respondent submitted its Order and Petitioners refused to approve the form of the Order. Because of Petitioners' objections, two further hearings were required before the court settled the form of the final rent trust fund order. Although the Order was not filed and signed by the judge until October 9, 1990, the date of the trial, Petitioners failed to disclose to this Court that: (1) Petitioners had been orally informed by the court in August 1990 that Respondent's motion would be granted; (2) Petitioners would be required to deposit rents into the rent trust fund by September 15, 1990; and (3) the proposed Order had been submitted to the court by Respondent in September.

On October 9, 1990, the date for the trial, Petitioners' counsel acknowledged that Petitioners were unable to deposit the rents into the rent trust fund as ordered. Since

Petitioners were in default of the Lease for failure to pay the rents due without offset or deduction and were unable to deposit these rents into the rent trust fund, the court informed counsel for the parties that it would grant a Writ of Possession and Judgment for Possession. At Petitioners' request, the court stayed execution of the writ of possession for three days to allow Petitioners to again seek relief from the State Supreme Court. The State Supreme Court granted a ten-day temporary stay, asked for memoranda of law and then declined to issue a permanent stay pending appeal.

Honsew, Inc. then filed Chapter 11 reorganization proceedings in the United States Bankruptcy Court. After numerous requests for delay by Honsew, Inc., the Bankruptcy Court in February of 1991, finally lifted the automatic stay due to Honsew's inability to pay post-petition rents. By the time Respondent recovered possession of its premises, the unpaid rents due and owing exceeded $245,000.00. This amount remains unpaid. The lawsuit for breach of lease filed by Petitioners in the Circuit Court of the First Circuit of the State of Hawaii in May of 1990 is still pending disposition. Petitioners have made little or no effort to prosecute this action. At no time have Petitioners demanded an early trial in either the District Court action or the Circuit Court action.

SUMMARY OF ARGUMENT

The Petition for Writ of Certiorari should be denied because the decision of the Hawaii Supreme Court is consistent with the rulings of this Court which uphold

the constitutionality of similar proceedings and statutes. Moreover, the Hawaii Supreme Court's decision does not conflict with the decision of any other state court of last resort or with the decision of any United States Court of Appeals, nor does it involve unsettled federal questions.

In *Lindsey v. Normet*, 405 U.S. 56 (1972), this Court established that the Due Process Clause of the Fourteenth Amendment does not impose a constitutional barrier preventing a state from insisting that a tenant provide for accruing rents pending a judicial determination of its disputes with the landlord. Petitioners' assertion of *Fuentes v. Shevin*, 407 U.S. 67 (1972) is inapposite since the Hawaii Rent Trust Fund Statute provides for a hearing and determination of rents due and owing before requiring the tenant to make deposits into the rent trust fund.

This Court further established in *Lindsey* that the Equal Protection Clause of the Fourteenth Amendment is not violated where a state validly singles out possessory disputes between landlords and tenants for especially prompt judicial settlement, even though in practice, the law may result in some inequality. Due to the unique factual and legal characteristics of the landlord-tenant relationship, a state is within its constitutional powers to provide rapid, judicially supervised mechanisms to resolve landlord-tenant disputes. Petitioners' argument that the Rent Trust Fund Statute violates the Equal Protection Clause because it discriminates between tenants who can afford to deposit rents and tenants who cannot afford to deposit rents should be rejected. Although the Hawaii statute may result in some disparate treatment,

the statutory directives of Hawaii Revised Statutes Section 666-21 are reasonably related to legitimate state goals.

ARGUMENT

I. THE HAWAII RENT TRUST FUND STATUTE, HAWAII REVISED STATUTES SECTION 661-21, DOES NOT VIOLATE THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES.

Petitioners allege that the Hawaii Rent Trust Fund Statute violates the Due Process Clause of the Constitution because it did not afford Petitioners notice and an opportunity to be heard on the merits of all issues, including Petitioners' claims for offsets prior to the imposition of a rent trust fund. Petitioners' allegations are both factually and legally unsound because the Constitution does not prohibit the segregation of certain issues involving possessory rights for summary disposition, nor does it require a full hearing on the merits of all issues, including claims for offsets prior to this disposition.

A. THE SEGREGATION OF THE SUMMARY POSSESSION ISSUE FROM THE REMAINING ISSUES IS CONSTITUTIONALLY PERMISSIBLE.

The Hawaii Supreme Court applied and followed this Court's reasoning and decision in *Lindsey v. Normet*, 405 U.S. 56 (1972) in finding that the Hawaii Rent Trust Fund

Statute, Hawaii Revised Statutes Section 666-21, was constitutional. In *Lindsey,* this Court found no constitutional barrier to a statute requiring a tenant to deposit accruing rent pending judicial settlement of a dispute with the landlord. *Lindsey,* 405 U.S. at 56. In doing so, this Court found that it was also permissible to segregate an action for possession of property from other actions arising out of the same factual situation even though they may assert valid legal or equitable defenses or counterclaims. *Lindsey,* 405 U.S. at 67-68. In support, this Court cited *Bianchi v. Morales,* 262 U.S. 170 (1923) where the Court had previously upheld Puerto Rico's mortgage law which provided for summary foreclosure of a mortgage without allowing any defense except payment. There the Court concluded that it was permissible under the Due Process Clause to exclude claims of ultimate right from the possessory action and to allow other equitable defenses to be set up in a separate action to annul the mortgage. *Lindsey,* 405 U.S. at 68.

The Hawaii Rent Trust Fund Statute which seeks to balance the property rights of landlords and tenants conforms to the standards set forth in *Lindsey,* in segregating the possessory action from other actions or disputes. As the Court recognized in *Lindsey,* the "Constitution has not federalized the substantive law of landlord-tenant relations" and the Constitution does not forbid a state from treating the undertakings of the tenant and those of the landlord as independent rather than dependent covenants. *Lindsey,* 405 U.S. at 68. The Hawaii statute treats these undertakings separately and limits the available defenses in a rent trust fund hearing to proof of payments

or proof of written contractual agreements allowing offsets or deductions against payment. If the written lease agreement does not allow offsets to the payment of rents then these matters are separately adjudicated. The statute does not eliminate the tenant's claims. In the case at bar, Petitioners' Complaint filed in the Circuit Court of the First Circuit, State of Hawaii on May 9, 1990 is pending disposition.

B. HAWAII REVISED STATUTES SECTION 666-21 PROVIDES FOR NOTICE AND A REASONABLE OPPORTUNITY TO BE HEARD.

Under the Hawaii statute, a motion for the establishment of a rent trust fund does not automatically result in a court order directing the tenant to deposit monies or face eviction. After the filing of the motion, which must be served upon the tenant according to Rule 5 of the Hawaii District Court Rules of Civil Procedure (Respondent's Appendix "5"), the Hawaii statute provides a tenant with an opportunity to be heard prior to the issuance of a court order. Hawaii Revised Statutes Section 666-21 states in pertinent part:

> (a) *At the request* of either the tenant or the landlord in any court proceeding in which the payment or nonpayment of rent is in dispute, the court shall order the tenant to deposit any disputed rent as it becomes due . . . provided that *the tenant shall not be required to deposit any rent* where the tenant can show to the court's satisfaction that the rent has *already been paid to the landlord;* provided further that *if the parties had executed a written instrument agreeing that the*

> *rent could be withheld or deducted, the court shall not require the tenant to deposit rent into the fund.*

Haw. Rev. Stat. § 666-21 (1985) (emphasis added).

The statute explicitly provides the tenant with the opportunity to show to the "court's satisfaction" that the rent has already been paid to the landlord, or that the parties had executed a written instrument agreeing that the rent could be withheld or deducted. Only after the tenant is unable to show this and after the landlord has established the amount of rents called for under the lease does an order issue.

The cases cited by Petitioners in support of their assertion of a violation of the Due Process Clause of the Fourteenth Amendment are inapposite because, unlike the Hawaii statute, they all involve possessory actions where a person was denied a reasonable opportunity to be heard prior to a seizure.

In *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969), this Court held that a Wisconsin prejudgment garnishment statute violated the Fourteenth Amendment of the United States Constitution because the statute permitted the freezing of a defendant's wages during the interim between the service of a garnishment petition and the main suit without any opportunity to be heard. In *North Georgia Finishing, Inc. v. Di-Chem, Inc.*, 419 U.S. 601 (1975), this Court found a Georgia garnishment statute in violation of the Due Process Clause of the Fourteenth Amendment since a writ of garnishment was not only issued without notice or opportunity for an early hearing but was issued by a court clerk without participation by a judicial officer.

In *Fuentes v. Shevin*, 407 U.S. 67 (1972), this Court held as unconstitutional Florida and Pennsylvania prejudgment replevin statutes which allowed seizure of personal property upon an application by any person who claimed a right to property and who posted a security bond. Neither statute required that the possessor of the property be given notice or an opportunity to be heard prior to the seizure.

The Court in *Fuentes v. Shevin*, in discussing the need to afford an opportunity to be heard also acknowledged that a state had the power to protect the property rights of creditors and to legislate the nature and form of the hearing required:

> Our holding, however, is a narrow one. We do not question the power of a State to seize goods before a final judgment in order to protect the security interests of creditors *so long as those creditors have tested their claims to the goods through the process of a fair hearing.* The *nature and form* of such prior *hearings*, moreover, are legitimately open to many potential variations and *are a subject*, at this point, *for legislation* – not adjudication.

Fuentes v. Shevin, 407 U.S. at 96 (emphasis added).

Unlike the statutes reviewed in *Sniadach, North Georgia Finishing* and *Fuentes*, the Hawaii Rent Trust Fund Statute requires service of notice of the motion and a hearing, before the court issues an order requiring a deposit into the rent trust fund. This procedure as established by the Hawaii State Legislature provides a fair and reasonable hearing where the landlord's claims can be tested before an order issues.

In the case at bar, the Honolulu District Court not only held the requisite hearing, but also granted Petitioners' special request for an evidentiary hearing. After two separate days of hearings, the Court determined that the Lease Agreement provided for the payment of rents without offset or deduction and that Petitioners had not paid the rents as provided for under the Lease Agreement. Only then did it order the establishment of the rent trust fund as a condition for remaining in possession pending an adjudication of the remaining issues. Thus, the form of the notice and hearing, under the statute and as applied, are reasonably related to the state's power to balance the property rights of landlords and tenants and should not be overturned as unconstitutional.

II. THE ESTABLISHMENT OF A RENT TRUST FUND PURSUANT TO HAWAII REVISED STATUTES SECTION 666-21 DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES.

The Hawaii Rent Trust Fund Statute does not violate the Equal Protection Clause because the statutory provisions which require a tenant to deposit disputed rents pending the adjudication of the tenant's right to possession are reasonably related to the State's legitimate objective of expeditiously and peacefully resolving landlord-tenant disputes. Petitioners argue that the statute prejudicially impacts tenants who are unable to deposit disputed rents into a rent trust fund. An analysis of the facts and circumstances behind the law, the interests which the State seeks to protect, and the interests of those who may

be disadvantaged by the operation of the statute establishes that the Hawaii statute passes constitutional muster. *See generally, Williams v. Rhodes,* 393 U.S. 23, 30 (1968).

A. THE COURT SHOULD EMPLOY THE "RATIONAL BASIS" TEST IN ANALYZING THE VALIDITY OF THE HAWAII STATUTE.

Certain legislative classifications, such as race, are inherently suspect and presumptively invalid absent a showing of a compelling state interest. *Hunter v. Erickson,* 393 U.S. 385, 391-392 (1969). Similarly, gender classifications require a showing that the classification bears a "close and substantial relationship to important governmental objectives". *Personnel Administrator of Mass. v. Feeney,* 442 U.S. 256, 273 (1979), citing *Craig v. Boren,* 429 U.S. 190, 197 (1976) reh'g denied, 429 U.S. 1124 (1977). Classifications which are not "suspect" are analyzed under a less exacting standard which requires only that the classification be rationally related to a legitimate state objective. *Friedman v. Rogers,* 440 U.S. 1, 17 (1979), reh'g denied, 441 U.S. 917 (1979). It is this "rational basis" test which should be applied in the instant case.

In *Lindsey v. Normet,* 405 U.S. 56 (1972), where this Court considered an Oregon statute similar to the Hawaii Rent Trust Fund Statute, Appellants urged the Court to apply a more stringent standard than the rational basis test. Appellants argued that a higher standard was required because the need for decent shelter and the right to retain peaceful possession of one's home were fundamental interests which are particularly important to the

poor. The Court rejected Appellants' argument holding that:

> The statute potentially applies to all tenants, rich and poor, commercial and non-commercial; it cannot be faulted for over-exclusiveness or under-exclusiveness. And classifying tenants of real property differently from other tenants for the purposes of possessory actions will offend the equal protection safeguard "only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective," or if the objective itself is beyond the State's power to achieve.

Lindsey, 405 U.S. at 70 (citations omitted). The Court explained that the mere rationality standard was sufficient because the Constitution does not guarantee access to dwellings of a particular quality or the right of a tenant to hold-over property without paying rent, although the Constitution does prohibit the confiscation of a landlord's property or the income therefrom. *Lindsey*, 405 U.S. at 74.

In the case at bar, Petitioners claim that the application of the Hawaii Rent Trust Fund Statute discriminates against "impecunious tenants". This is not a "suspect" classification based upon race, alienage, or some other inalterable trait. There is no fundamental right of access to commercial property of a particular quality, nor in the years since *Lindsey* has the Constitution been interpreted to guarantee commercial tenants a right to hold-over property without paying rent. Petitioners have failed to show any circumstances which warrant the application of "strict judicial scrutiny".

B. THE CLASSIFICATIONS OF THE HAWAII RENT TRUST FUND STATUTE ARE REASONABLY RELATED TO A LEGITIMATE STATE GOAL.

The Equal Protection Clause does not require absolute equality or precisely equal advantages, nor does it require the State to equalize economic conditions. *See Ross v. Moffit*, 417 U.S. 600, 611 (1974) (no violation of equal protection where State refused to provide indigent defendant with legal counsel for discretionary appeal, even though the indigent would be somewhat handicapped in comparison to a wealthy defendant assisted by counsel); *see also James v. Valtierra*, 402 U.S. 137 (1971) (even though referendum arguably hampered persons seeking low income housing from achieving their objective, no violation of equal protection in light of legitimate purpose of referendum process). In *Lindsey*, the Court also noted that the state legislature is presumed to have acted within its constitutional power despite the fact that, in practice, its laws may result in some inequality. *Lindsey*, 405 U.S. at 71, citing *McGowan v. Maryland*, 366 U.S. 420, 425-426 (1965).

In the present case, some tenants may be disadvantaged by having to deposit rents as a form of security pending trial. This in itself is not a violation of equal protection if the alleged disparity is reasonably related to a legitimate state purpose. To determine whether the disparate treatment of possessory tenants was reasonably related to a legitimate state purpose, the *Lindsey* Court examined the unique nature of the landlord-tenant relationship:

> The tenant is, by definition, in possession of the property of the landlord; unless a judicially supervised mechanism is provided for that would otherwise be swift repossession by the landlord himself, the tenant would be able to deny the landlord the rights of income incident to ownership by refusing to pay rent and by preventing sale or rental to someone else. Many expenses of the landlord continue to accrue whether the tenant pays his rent or not. Speedy adjudication is desirable to prevent subjecting the landlord to undeserved economic loss and the tenant to unmerited harassment and dispossession when his lease or rental agreement gives him the right to peaceful and undisturbed possession of the property.

Lindsey, 405 U.S. at 72-73. The Court held that conditioning a continuance of the trial on a tenant's deposit of rent in an amount which directly corresponded to the landlord's potential damages was rationally related to the legitimate state goal of the "rapid and peaceful settlement" of landlord-tenant disputes.

The *Lindsey* Court held invalid another portion of the Oregon statute which required a tenant who wished to appeal from an adverse ruling to post a bond for twice the amount of rent expected to accrue pending the appellate decision and to forfeit the entire double-bond in the event the lower court decision was affirmed. The Court found that the double-bond requirement arbitrarily discriminated against appealing tenants and bore no reasonable relationship to any valid state objective because it was unrelated to actual rent accrued or specific damage sustained by the landlord. *Lindsey v. Normet*, 405 U.S. at 77.

The same considerations underlie the Hawaii Rent Trust Fund Statute. Prior to the establishment of the Rent Trust Fund Statute in Hawaii, landlords who obtained a judgment for possession were often unable to even recover the rent accrued before and during the summary possession trial which was often a lengthy and costly proceeding. At the same time, unscrupulous tenants were unjustly enriched by being allowed to occupy the premises rent-free until evicted.

By enacting the Rent Trust Fund Statute, the Legislature intended to create a mechanism for a speedy and peaceful resolution of disputes over the nonpayment of rent while minimizing the harm to both landlords and tenants. Requiring a tenant to deposit rents as a form of security pending the adjudication of possessory rights achieves this legitimate State objective. Unlike the double-bond requirement which was held invalid in *Lindsey*, the amount to be deposited into the rent trust fund, which is the amount tenant promised to pay under the lease, bears a direct correlation to the landlord's actual damages.

The facts of the present case dramatically illustrate the problems faced by landlords. Respondent filed its summary possession action on June 28, 1990. Over the next several months, Petitioners employed numerous delaying tactics that enabled them to operate their business out of Respondent's property rent-free. Although Respondent's motion to establish a rent trust fund was orally granted in August 1990, Petitioners delayed the entry of the order so that it was not until October 9, 1990, the date of trial, that a writ of possession issued. By the

time Respondent actually recovered possession in 1991, Petitioners owed more than $245,000.00 in back rent.

CONCLUSION

The Hawaii Rent Trust Fund Statute is constitutional both on its face and as applied because it preserves the notice and hearing requirements of procedural due process and is reasonably related to legitimate state objectives as required by the Equal Protection Clause. Respondent, therefore, respectfully requests this Court to find that the Hawaii statute is constitutional, and to deny the Petition for a Writ of Certiorari.

DATED: Honolulu, Hawaii, December 17, 1992.

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APPENDIX 1

NO. 14881

IN THE SUPREME COURT OF THE
STATE OF HAWAII

PAUAHI ASSOCIATES, a Hawaii General Partnership, Plaintiff-Appellee, vs. MAYFLOWER INTERNATIONAL COMPANY, DBA HONSEW, INC., a Hawaii General Partnership; HONSEW, INC., a Hawaii corporation; TSUNG HAI LIN aka THEODORE T. H. LIN; and MAY KWONG, Defendants-Appellants.	CIV. NO. H90-2900

ORDER

(Filed Nov. 24, 1992)

Upon consideration of Plaintiff-Appellee Pauahi Associates, a Hawaii General Partnership's Verified Bill of Costs, the papers in support, and there being no opposition thereto,

IT IS HEREBY ORDERED, pursuant to Rule 39 of the Hawaii Rules of Appellate Procedure, that Pauahi Associates, a Hawaii General Partnership is awarded $613.00 in costs to be borne by Defendants-Appellants Mayflower International Company, dba HONSEW, INC., a Hawaii

General Partnership; HONSEW, INC., a Hawaii Corporation; TSUNG HAI LIN aka THEODORE T. H. LIN; and MAY KWONG.

DATED: Honolulu, Hawaii, November 24, 1992.

/s/ Steven H. Levinson [SEAL]
Associate Justice

APPENDIX 2

NO. 14881

IN THE SUPREME COURT OF THE
STATE OF HAWAII

PAUAHI ASSOCIATES, a Hawaii General Partnership,

Plaintiff-Appellee,

vs.

MAYFLOWER INTERNATIONAL COMPANY, dba HONSEW, INC., a Hawaii General Partnership; HONSEW, INC., a Hawaii Corporation; TSUNG HAI LIN aka THEODORE T.H. LIN; and MAY KWONG,

Defendants-Appellants.

CIVIL NO. H90-2900

APPEAL FROM:

1) DENIAL OF DEFENDANTS' DEMAND FOR TRIAL BY JURY, JULY 20, 1990;

2) ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO DISMISS COMPLAINT OR TO TRANSFER ACTION TO FIRST CIRCUIT COURT, OR TO STAY ALL PROCEEDINGS, JULY 30, 1990;

3) ORDER GRANTING PLAINTIFF'S MOTION FOR RELIEF FROM THE ORAL ORDER GRANTING PLAINTIFF'S MOTION FOR ESTABLISHMENT OF RENT TRUST FUND, OCTOBER 9, 1990;

)	4) ORDER GRANTING
)	PLAINTIFF'S EX PARTE
)	MOTION FOR
)	ISSUANCE OF
)	JUDGMENT FOR
)	POSSESSION AND
)	WRIT OF POSSESSION,
)	OCTOBER 9, 1990;
)	
)	5) JUDGMENT FOR
)	POSSESSION,
)	OCTOBER 9, 1990;
)	AND
)	
)	DISTRICT COURT OF
)	THE FIRST CIRCUIT
)	
)	HONORABLE FRANCIS
)	I. YAMASHITA
)	
)	HONORABLE DAVID
)	K. NAMAKA
)	
)	HONORABLE TANY S.
)	HONG
)	
)	Judges
)	(Filed Dec. 11, 1992)

JUDGMENT ON APPEAL
CERTIFICATE OF SERVICE

Of Counsel:
OLIVER, LAU, LAWHN & OGAWA
Attorneys at Law
A Law Corporation

ROY T. OGAWA 1821-0
A DEBBIE JEW 3213-0
707 Richards Street
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Honolulu, Hawaii 96813
Attorneys for Plaintiff-Appellee

NO. 14881

IN THE SUPREME COURT OF THE
STATE OF HAWAII

PAUAHI ASSOCIATES, a Hawaii General Partnership,

Plaintiff-Appellee,

vs.

MAYFLOWER INTERNATIONAL COMPANY, dba HONSEW, INC., a Hawaii General Partnership; HONSEW, INC., a Hawaii Corporation; TSUNG HAI LIN aka THEODORE T.H. LIN; and MAY KWONG,

Defendants-Appellants.

CIVIL NO. H90-2900

APPEAL FROM:

1) DENIAL OF DEFENDANTS' DEMAND FOR TRIAL BY JURY, JULY 20, 1990;

2) ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO DISMISS COMPLAINT OR TO TRANSFER ACTION TO FIRST CIRCUIT COURT, OR TO STAY ALL PROCEEDINGS, JULY 30, 1990;

3) ORDER GRANTING PLAINTIFF'S MOTION FOR RELIEF FROM THE ORAL ORDER GRANTING PLAINTIFF'S MOTION FOR ESTABLISHMENT OF RENT TRUST FUND, OCTOBER 9, 1990;

4) ORDER GRANTING PLAINTIFF'S EX PARTE MOTION FOR ISSUANCE OF JUDGMENT FOR POSSESSION AND WRIT OF POSSESSION, OCTOBER 9, 1990;

)	5) JUDGMENT FOR POSSESSION, OCTOBER 9, 1990; AND
)	DISTRICT COURT OF THE FIRST CIRCUIT
)	HONORABLE FRANCIS I. YAMASHITA
)	HONORABLE DAVID K. NAMAKA
)	HONORABLE TANY S. HONG
)	Judges

JUDGMENT ON APPEAL

Pursuant to the memorandum opinion of the Supreme Court of the State of Hawaii filed herein on August 26, 1992, the District Court's judgment for possession is affirmed on all particulars.

DATED: Honolulu, Hawaii, DEC 11 1992.

BY ORDER OF THE COURT:

/s/ Eugene L. Sabado
CLERK

APPROVED:

/s/ Steven H. Levinson
JUSTICE

[SEAL]

NO. 14881

IN THE SUPREME COURT OF THE
STATE OF HAWAII

PAUAHI ASSOCIATES, a Hawaii General Partnership,

Plaintiff-Appellee,

vs.

MAYFLOWER INTERNATIONAL COMPANY, dba HONSEW, INC., a Hawaii General Partnership; HONSEW, INC., a Hawaii Corporation; TSUNG HAI LIN aka THEODORE T.H. LIN; and MAY KWONG,

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)	4) ORDER GRANTING
)	PLAINTIFF'S EX PARTE
)	MOTION FOR
)	ISSUANCE OF
)	*JUDGMENT FOR*
)	POSSESSION AND
)	WRIT OF POSSESSION,
)	OCTOBER 9, 1990;
)	
)	5) JUDGMENT FOR
)	POSSESSION,
)	OCTOBER 9, 1990;
)	AND
)	
)	DISTRICT COURT OF
)	THE FIRST CIRCUIT
)	
)	HONORABLE FRANCIS
)	I. YAMASHITA
)	
)	HONORABLE DAVID
)	K. NAMAKA
)	
)	HONORABLE TANY S.
)	HONG
)	
)	Judges

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing judgment on Appeal was duly served by hand delivery upon the following at their last known address on October 27, 1992.

GARY VICTOR DUBIN, ESQ.
Seven Waterfront Plaza
Suite 400
500 Ala Moana Boulevard
Honolulu, Hawaii 96813

Attorney for Defendants-Appellants

DATED: Honolulu, Hawaii, OCT 27 1992.

/s/ A. Debbie Jew
ROY T. OGAWA
A. DEBBIE JEW
Attorneys for Plaintiff-Appellee

Of Counsel:
OLIVER, LAU, LAWHN
& OGAWA

APPENDIX 3

PERMISSION TO COPY DENIED HRS 606-13 AND OTHER RULES OF COURT

IN THE DISTRICT COURT OF THE FIRST CIRCUIT

HONOLULU DIVISION

STATE OF HAWAII

PAUAHI ASSOCIATES, a Hawaii General Partnership, Plaintiff, vs. MAYFLOWER INTERNATIONAL COMPANY dba HONSEW, INC., a Hawaii General Partnership, HONSEW, INC., a Hawaii Corporation, TSUNG HAI LIN aka THEODORE T. H. LIN and MAY KWONG, Defendants, and JACKSON PACIFIC JOINT VENTURE dba JACKSON CONTRACTORS, a Hawaii Registered General partnership, Intervenor.	)	Civil No. H90-2900

TRANSCRIPT

of proceedings had before the Honorable Francis I. Yamashita, Judge Presiding, on Monday, the 9th day of day of July, 1990.

OLIVER, LEE,
LAWHN, OGAWA & LAU

ROY T. OGAWA,
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CADES, SHUTTE,
FLEMING & WRIGHT

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Honolulu, Hawaii 96813

Attorneys for Intervenor.

REPORTED BY:

MARILYNNE J GRILHO CSR#217
Court Reporter
District Court of
the First Circuit
State of Hawaii

[p. 3] (Case called)

MR. OGAWA: Good afternoon, Your Honor.

Roy Ogawa on behalf of the plaintiffs. Your Honor, at this time we'd just like to take a default against May Kwong and Mayflower International, the general partnership.

There was a problem with service, and we re-served Mr. Lin and Hosew, Inc. So only those two are here for return today.

THE COURT: All right. Default judgment as to Mayflower International partnership and May Kwong. Continue as to service –

MR. OGAWA: Your Honor, that service is now set for July 16th at 1:30.

THE COURT: July 16th. Default, Judgment for Possession, Writ of Possession to issue. Continue the matters for proof – for disposition to July 16th, then you can set proof at that time. How's that?

MR. OGAWA: Yes. Well, technically, Your Honor, we can't have judgment for possession yet, without the other defendants.

THE COURT: Well, that's why I'm continuing the whole thing. Okay.

MR. OGAWA: Thank you, Your Honor.

APPENDIX 4

IN THE DISTRICT COURT OF THE FIRST CIRCUIT

HONOLULU DIVISION

STATE OF HAWAII

PAUAHI ASSOCIATES, a Hawaii General Partnership, Plaintiff, vs. MAYFLOWER INTERNATIONAL COMPANY dba HONSEW, INC., a Hawaii General Partnership, HONSEW, INC., a Hawaii Corporation, TSUNG HAI LIN aka THEODORE T.H. LIN and MAY KWONG, Defendants, and JACKSON PACIFIC JOINT VENTURE dba JACKSON CONTRACTORS, a Hawaii Registered General Partnership, Intervenor.	Civil No. H90-2900

TRANSCRIPT

of proceedings had before the Honorable Tany S. Hong, Judge Presiding, on Monday, the 30th day of July, 1990.

OLIVER, LEE, LAWHN,
OGAWA & LAU — Attorneys for Plaintiffs,

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GARY VICTOR DUBIN,
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LORRAINE AKIBA,
1000 Bishop Street
12th Floor
Honolulu, Hawaii 96813

REPORTED BY:

MARILYNNE J GRILHO CSR 217
Court Reporter
District Court of
the First Circuit
State of Hawaii

* * *

[p. 43] failed to raise a compulsory counterclaim, whether or not the counterclaim was waived – whether or not that applies to summary possession cases, Mr. Dubin, I think is stretching a reading of those cases.

As far as the Court is concerned, there has been no waiver of Mr. Ogawa's so-called compulsory counterclaim. This is a summary possession action.

So as far as the Court is concerned, the issues you raise in your memorandum: 1 is denied. 2 is also denied.

3 is granted. 4 is granted. With respect to your alternative argument, the stay of proceedings, that is also denied.

Which brings us now to the question relating to the amount of the rent that is going to go into the rent trust fund. Inasmuch as it's almost 12 o'clock – yes, Mr. Ogawa?

MR. OGAWA: I'd just like some clarification for the record. With respect to 3 and 4, my understanding is 3 is with respect to jurisdictional amount.

THE COURT: Yes. It's granted with respect to jurisdictional amount.

MR. OGAWA: Only for determination of amount of damages?

THE COURT: That is correct.

MR. OGAWA: And 4 is granted with respect [p. 44] to the guarantors' liability?

THE COURT: That is correct. It's my understanding you've made a demand for jury trial as to all issues – I think what you have to do is clarify your demand. I think the requirement is that you specify which items are – or which issues in dispute should go up to the Circuit Court, Mr. Dubin.

But I presume that what you're talking about is with respect to liability of the guarantors, and then with respect to the issue of damages relating to all damages arising out of the leasehold, as well as the issue as to the amounts of rent due and owing.

MR. DUBIN: I think the issue as to the guarantors went to jurisdiction, not to transfer, but to dismiss

the issue on damages. It goes to the amount of jurisdiction, not the issue of –

THE COURT: Well, I'm not going to dismiss it. I'm going to simply transfer it and let the court make a determination on your –

MR. DUBIN: Can I bring up a housekeeping matter. The original complaint was first served on my client's wife who is a guarantor. Default was taken against her and the general partnership. And it seems a waste of time now to file a motion to set aside the default so that –

THE COURT: No. You'll have to file your [p. 45] motion, Mr. Dubin. I can't handle it orally. I'm sorry.

MR. DUBIN: I was hoping Mr. Ogawa would cooperate and –

THE COURT: Mr. Ogawa?

MR. OGAWA: Your Honor –

THE COURT: I'll leave it to Mr. Ogawa.

MR. OGAWA: – I've indicated to Mr. Dubin on several occasions that if he – at the time when he prepares his client's affidavit as to the reasons why she didn't show up, why she didn't contact him, what the defenses are, we'd at that time make our determination.

He kept asking me, and I kept telling him, file the affidavit and move, and we'll determine whether we'll agree with it or not.

THE COURT: All right. File the motion, Mr. Dubin.

And as I indicated, it's almost 12 o'clock. I'm prepared to do the following: Recess, because we do have a trial date set for Thursday afternoon, I believe. Is that correct?

Maybe we can use that Thursday afternoon to make a determination as to your motion for reconsideration. Make a determination as to the amount of rent due and owing.

* * *

APPENDIX 5

Hawaii District Court Rules of Civil Procedure

RULE 5. SERVICE AND FILINGS OF PLEADINGS AND OTHER PAPERS.

(a) Service: When Required. Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, brief or memorandum of law, offer of judgment, bill of costs, designation of record on appeal, and similar paper shall be served upon each of the parties, but no service need be made on parties in default for failure to appear, except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

(b) Same: How Made. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be

served has no office, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

(c) (Reserved)

(d) Filing. Except as provided in subdivision (f) of this rule, all papers after the complaint required to be served upon a party shall be filed with the court either before service or within a reasonable time thereafter.

(e) Filing With The Court Defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk.

(f) Nonfiling of Discovery Materials. A deposition, interrogatory, request for discovery production or inspection, request for documents, request for admissions, and answers and responses thereto shall not be filed automatically with the court; provided that on a motion or at trial any such document shall be filed when offered in evidence or submitted as an exhibit; and further provided that a deposition taken outside this state or a deposition taken by an officer who is discontinuing the occupation of taking depositions shall be promptly filed pursuant to Rule 30(f)(1). In addition the court may at any time, on ex parte request or sua sponte, order the filing of any discovery material.

(Amended March 16, 1984, partly effective March 16, 1984, fully effective May 1, 1984.)